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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 752

POLAKOW'S REALTY EXPERTS, INC.,
Petitioner,

vs.

THE STATE OF ALABAMA.

No. 753

P. S. STRUMPF,
Petitioner,

vs.

THE STATE OF ALABAMA.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

HORACE C. WILKINSON,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writs of certiorari	1
Summary statement of matter involved	2
Opinions below	3
Jurisdiction	4
Reasons relied on for allowance of writs	4
Questions presented	5
Specification of errors	5
Prayer for writs	6
Appendix—Sections 298 to 303, inclusive, Alabama Real Estate Law, Title 46, Chapter 14, Alabama Code 1940	7
—Indictment against P. S. Strumpf	12
—Indictment against Polakow's Realty Experts, Inc.	13
Brief in support of petition	15
Proposition of Law	15
Proposition I—The right to work for a living in the common occupations of the community is of the very essence of personal freedom that it was the purpose of the 14th Amendment to procure	15
Proposition II—The power to regulate a business does not necessarily include the power to exclude persons from engaging in it	15
Proposition III—The real estate is a harmless, innocuous business and one's right to follow it cannot be destroyed by legislation	15
Argument	16

Table of Cases Cited.

Adams v. *Tanner*, 244 U. S. 590	4, 15
Becker v. *State*, 185 A. 93	19

Page

Bramley v. *State*, 2 S. E. (2d) 647 ..... 15, 18
Bratton v. *Chandler*, 260 U. S. 110 5
Bushman v. *Bechtel*, 114 Pac. 227 ..... 16, 19
City of Osceola v. *Blair*, 231 Iowa 771, 2 N. W. (2d) 83 ..... 16, 19
DeBerry v. *City of LaGrange (Ga.)*, 6 S. E. 146 ..... 16, 19
Hall v. *Geiger-Jones Co.*, 242 U. S. 539 19
Kent Stores v. *Wilentz, Atty. Gen.*, 14 Fed. Rep. 1 ..... 4, 16
New State Ice Co. v. *Liebmann*, 285 U. S. 262 ..... 4, 15, 18
People ex rel. Durham Realty Corp. v. *LeFetra*, 230 N. Y. 429, 130 N. E. 601, 16 A. L. R. 152 ..... 15, 17
Pope Case, 242 Pac. 290 20
Rawles v. *Jenkins*, 279 S. W. 350 ..... 15, 19
Replogle v. *City of Little Rock*, 166 Ark. 617, 267 S. W. 353, 36 A. L. R. 1333 ..... 15, 16, 17, 19
Ribnik v. *McBride*, 277 U. S. 350, 56 A. L. R. 1327 ..... 4, 15, 18
Richardson v. *Coker*, 3 S. E. (2d) 636 ..... 16, 18
Richey v. *Smith*, 84 Pac. 851, 5 L. R. A. (NS) 674 16
Roman v. *Lobe*, 243 N. Y. 51, 152 N. E. 451, 60 A. L. R. 1329 20
State v. *Dixon*, 215 N. C. 161, 1 S. E. (2d) 521 ..... 16, 18
State v. *Harris*, 216 N. C. 746, 6 S. E. (2d) 854 ..... 15, 17, 18
State of Ohio v. *Helvering*, 292 U. S. 360, 54 S. Ct. 725, 78 L. Ed. 1307 ..... 15, 17
State v. *Porter*, 94 Conn. 639, 110 A. 59 ..... 15, 17
State v. *Rose*, 122 So. 225 20
Traux v. *Raich*, 239 U. S. 35 ..... 4, 15, 16
Williams v. *Standard Oil Co.*, 278 U. S. 235 ..... 4, 15, 18
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522 ..... 4, 15, 18
Zerlin v. *La. Real Estate Board*, 103 So. 528 20
N. C. Law Review, Vol. 17 15

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THE STATE OF ALABAMA.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

To the Honorable Supreme Court of the United States:

Your petitioners, P. S. Strumpf, a citizen of the State of Alabama, and a citizen of the United States of America, and Polakow's Realty Experts, Inc., a corporation organized under the laws of the State of Alabama, and chartered and empowered to buy and sell real estate, respectfully

prays that writs of certiorari issue out of this Honorable Court to review the final judgment of the Supreme Court of Alabama, rendered in the above styled causes (which were consolidated by said court and decided together), on the 19th day of November, 1942, and reported in — So. (2d) at page —, whereby the said Supreme Court of Alabama overruled petitioners' application for a rehearing of the judgment rendered by said Court on October 22, 1942 wherein said Court reversed the judgment of the Bessemer Division of the Circuit Court of the Tenth Judicial Circuit of Alabama, rendered in each of said cases on March 20, 1942, holding Chapter 14 of Title 46 and Section 298 of said Chapter 14, Alabama Code 1940, unconstitutional, sustaining a demurrer to the indictment in each case and discharging each defendant in each case, and in support of their separate petitions for a certiorari each petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

Polakow's Realty Experts, Inc. is an Alabama corporation. Its business is purchasing land, laying it out in subdivisions, and selling the lots. For this purpose it employs salesmen, some on a salary, some on commission, some on a salary and commission, to sell its lots. It does not undertake to sell or handle any property for others. Its activities are confined exclusively to real estate owned by the corporation.

P. S. Strumpf is an employee of Polakow's Realty Experts, Inc. employed by the corporation to sell its lots. He devotes his entire time to the business of the corporation. He is an all time employee of the corporation having no other employment.

The corporation and the employee were each indicted for an alleged violation of the "Alabama Real Estate Law."

The Alabama Statute and the indictments are set out in the Appendix. Briefly, they were indicted for engaging in the private business of a real estate broker or a real estate agent, without obtaining a permit from the Alabama Real Estate Commission so to do.

When the cases were called in the Circuit Court each defendant demurred to the indictment on the ground, *inter alia*, that the statute was null and void in that it is violative of the 14th Amendment to the Constitution of the United States of America in that it deprived the individual defendant Strumpf of the right to work for a living in a common, innocuous occupation in the community without procuring a permit to work at such occupation, and deprived the corporate defendant of its right to sell its property except through a "licensed" real estate broker.

The Circuit Court sustained the demurrer, adjudged the statute unconstitutional, and discharged each defendant.

The State of Alabama appealed to the Supreme Court of Alabama, as it has a right to do in cases where a nisi prius court holds a statute unconstitutional. Title 15, Sec. tion 15, Code of Alabama, 1940. The Justices of the Supreme Court of Alabama divided. Four of the Justices, a majority of one, decided that the statute was not offensive to the Federal Constitution and reversed the case. Two Justices dissented, being of the opinion that the act offended both the State and Federal Constitutions. One Justice, who was Attorney General of the State when the prosecution was instituted, did not sit in the case.

Opinions Below.

The majority opinion and the response to the application for a rehearing was written by Mr. Chief Justice Gardner. The dissenting opinion was written by Mr. Justice Brown. Both are reported in — So. (2d) —.

II.

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under Section 344 U. S. C. A. (Judicial Code, Section 237, amended February 13, 1925) subsections (a) and (b) separately and severally.

III.

Reasons Relied On for the Allowance of the Writs.

1. The Supreme Court of Alabama in deciding that the Alabama Real Estate Law, Chapter 14 of Title 46 and Section 298 of said Chapter 14, Alabama Code 1940, was not violative of the 14th Amendment to the Constitution of the United States decided an important question of Federal Law, which has not been, but should be, settled by this Court.

The importance of the question arises from the fact that the highest Courts of the States which have passed on a similar statute are divided and the Justices of the Supreme Court of Alabama are themselves divided as to the constitutionality of the statute.

2. The Supreme Court of Alabama decided an important question of Federal law very probably in conflict with applicable decisions of this Court. Among these decisions are:

Truax v. *Raich*, 239 U. S. 33;
Adams v. *Turner*, 244 U. S. 590;
Williams v. *Standard Oil Co.*, 278 U. S. 235;
New State Ice Co. v. *Liebmann*, 285 U. S. 262;
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522;
Ribnik v. *McBride*, 277 U. S. 350;
Kent Stores v. *Wilentz, Atty. Gen.*, 14 F. (2d) 1.

3. The Supreme Court of Alabama erroneously ruled that all questions presented by a consideration of the Fourteenth Amendment were in the minds of the members of the Court when *Bratton* v. *Chandler*, 260 U. S. 110, was decided. The decision in that case plainly shows that this Court only dealt with the power of the Commission under Section 8 of the Act—and not with the validity of the Act.

Questions Presented.

So far as the individual is concerned the controlling question is whether the State of Alabama can bar an individual from selling real estate—or acting as a real estate broker—until he makes a showing to the Alabama Real Estate Commission that he is "trustworthy and competent to transact the business of a real estate broker or real estate salesman *in such manner as to safeguard the interests of the public*" and obtains a license from the Commission, and thereby deprive him of the right to work for a living in a common, innocuous occupation in the community, until he obtains such license.

The controlling question, in so far as the corporation is concerned, is whether the State of Alabama can make it a crime for a corporation to dispose of its own property through its own "unlicensed" employees.

Specification of Errors to Be Urged.

The Honorable Supreme Court of Alabama erred:

1. In reversing the judgment of the Bessemer Division of the Jefferson Circuit Court discharging petitioners.

2. In holding that the "Alabama Real Estate Law" Sec. 298, et sequa, Code of Alabama 1940, Title 46, Act No. 344, Acts 1927 p. 335, was not violative of the 14th Amendment to the Constitution of the United States of America.

3. In holding that a citizen of the United States was guilty of a crime if he sold real estate for the owner without obtaining a permit from the Alabama Real Estate Commission so to do.

4. In holding that an Alabama corporation, duly chartered to buy, own and sell real estate was guilty of a crime if it employed an agent to sell its property who did not have a permit from the Alabama Real Estate Commission so to do.

Prayer.

Wherefore your petitioners, separately and severally pray, (though it is agreeable to have the cases considered together as was done in the Supreme Court of Alabama) that writs of certiorari issue under the seal of this Court, directed to the Supreme Court of Alabama commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in case numbered 6 Div. 18 and entitled on its docket, The State of Alabama, Appellant, vs. Polakow's Realty Experts, Inc., a corporation, Appellee, and in case numbered 6 Div. 22 and entitled on its docket The State of Alabama, Appellant, vs. P. S. Strumpf, Appellee, to the end that said causes may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of the Supreme Court of Alabama in each case be reversed by the Court and for such other relief as to this Court may seem proper.

HORACE C. WILKINSON,
Counsel for Petitioners.